

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,

Appellant,

VS.

RUDOLF HENRY ROCKTESCHELL,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the
Northern District of California, First Division.

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED STATES OF AMERICA,

Appellant,

VS.

RUDOLF HENRY ROCKTESCHELL,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the
Northern District of California, First Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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For Petitioner and Appellant:

JOHN L. McNAB, Esquire, United States Attorney, for the Northern District of California, at San Francisco.

For Respondent and Appellee:

W. F. SULLIVAN, Esquire, San Francisco, California.

In the District Court, United States, Northern District of California (First Division).

14,024.

THE UNITED STATES

vs.

RUDOLF ROCKTESCHELL.

Praeceptum for Record.

The Clerk of said Court will please furnish the United States Attorney with a certified Transcript of the entire Record and Minute Orders in the above-entitled case on appeal:

Authorized by letter of Attorney General dated May 28, 1912, "WRH-WWL, 162227-1."

This 3d day of August, 1912.

J. L. McNAB,
U. S. Attorney.

[Endorsed]: Filed Oct. 14, 1912. Jas. P. Brown.
By C. W. Calbreath, Deputy Clerk. [1*]

*Page-number appearing at foot of page of original certified Record.

*In the District Court of the United States, in and for
the Northern District of California.*

UNITED STATES OF AMERICA,

Petitioner,

vs.

RUDOLF HENRY ROCKTESCHELL,

Respondent.

Petition to Cancel Certificate of Citizenship.

The petition of the United States of America respectfully shows :

I.

That Robert T. Devlin is the duly appointed, qualified and acting United States Attorney in and for the Northern District of California.

II.

That in an *ex parte* proceeding had and taken by said respondent in the Circuit Court of the United States for the District of Massachusetts, on the 25th day of June, A. D. 1906, under and by virtue of the laws of the United States, an order and certificate of citizenship was in due form made and entered in said Court, admitting said respondent to become a citizen of the United States of America, and thereafter a certified copy thereof issued and delivered to said respondent, which aforesaid order and certificate of citizenship was in words and figures as follows, to wit:

UNITED STATES OF AMERICA.

*Circuit Court of the United States, District of
Massachusetts.*

To All People to Whom These Presents Shall Come,
Greeting:

KNOW YE, that at a Circuit Court of the United States, begun and holden at Boston, within and for the District of Massachusetts, [2] on the last Tuesday of February, in the year of our Lord one thousand nine hundred and six, to wit, on the twenty-fifth day of June, A. D. 1906, RUDOLF HENRY ROCKTESCHELL of Boston, in said district, engineer, born at Trankfort, Germany, was admitted to become a citizen of the United States, said Rudolf Henry Rockteschell having made his final application for naturalization, accompanied with his affidavit and the affidavits of his witnesses, reciting and affirming the truth of every material fact requisite for his naturalization, among other things that he had resided in the United States three years next preceding his arriving at the age of twenty-one years; that he had continued to reside therein to the time of making his application to be admitted a citizen thereof; that he had resided therein five years, including the three years of his minority; that during the two years next preceding his application it had been his *bona fide* intention to become a citizen of the United States; that he had resided one year last past within the State of Massachusetts, and within the United States five years last past; that during all said residence in the United States he had be-

haved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; that he did not disbelieve in, nor was he opposed to, all organized government; that he was not a member of, or affiliated with, any organization entertaining and teaching such disbelief in, or opposition to, all organized government; that he did not advocate or teach the duty, necessity or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States, or of any other organized Government, because of his or their official character, and that he had not violated any of the provisions of An Act to Regulate the Immigration of Aliens into the United States, approved [3] March 3, 1903; and he also having shown by proof other than his own oath his residence aforesaid, and the Court having made careful inquiry into each and all of such matters, and having found that affidavits thereto were duly made by said applicant and his witnesses so far as applicable, and the applicant having declared on oath and solemnly sworn that he would support the Constitution of the United States, and that he did absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign Prince, Potentate, State or Sovereignty, and particularly to William II, Emperor of Germany, whose subject he had heretofore been, and the Court having ordered that said application be granted, and the Court having further ordered that record be made of all the

matters aforesaid, including the affidavits of the applicant and his witnesses so far as applicable, and the Court having found that all of said affidavits were duly made and recorded as provided by statute, and having ordered that a certificate of naturalization issue accordingly, this certificate is issued pursuant to such order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Boston aforesaid, the day and year last above written, and in the one hundred and 30th year of Independence of the United States of America.

[Seal] ALEX V. TROWBRIDGE,
Clerk of the Circuit Court of the United States, for
the District of Massachusetts.

III.

That the said order and certificate of citizenship was procured from said Court upon the representation that said respondent had resided within the United States for the continued term of at least five years immediately preceding the date of his application for citizenship in said Court as aforesaid, and continuously since prior to his arriving at the age of [4] eighteen years, whereas in truth and in fact, respondent had not resided continuously in the United States for five years, nor continuously since prior to his arriving at the age of eighteen years, but had resided in the United States at the times and in the manner as set forth in the affidavit attached to this petition and marked Exhibit "A," which is hereby referred to and made a part hereof, said affidavit, showing good cause for the institution of this

proceeding, having been received by the United States Attorney in and for this District, wherein said respondent now resides, prior to the institution of this proceeding.

WHEREFORE, your petitioner prays for a judgment and decree of this Honorable Court, made and given after such notice as by law required, decreeing such naturalization to have been illegal, and setting aside, cancelling and holding for naught, said order and certificate of citizenship, assessing the entire costs of this proceeding against said respondent and decreeing such other and further relief as is meet in law or equity.

ROBERT T. DEVLIN,

CARLOS G. WHITE,

Attorneys for Said Petitioner in and for the Northern District of California.

Exhibit "A."

State of California,

City and County of San Francisco,—ss.

Peter W. Blazer, first being duly sworn, deposes and says:

Your affiant is a Naturalization Examiner in the United States Department of Justice, and as such had occasion in the discharge of his official duties to investigate as to the citizenship status of Rudolf Henry Rocketeschell, who is a resident of the city of San Francisco, State of California, [5] and that the following are the facts in respect to the citizenship and naturalization of said Rocketeschell:

Said Rocketeschell was born at Frankfort, Germany, on April 21, 1876, and was naturalized in the

Circuit Court of the United States at Boston in and for the District of Massachusetts, on June 25, 1906, under and by virtue of the provisions of sec. 2167, U. S. Revised Statutes, to wit, upon the representation that he had resided in the United States continuously since prior to his reaching the age of eighteen years and continuously for the five years immediately preceding the date of his naturalization, including the three years of his minority, and continuously in the State of Massachusetts at least one year prior thereto.

The facts as to the residence of said Rockteschell are as follows:

July 4, 1893. Said Rockteschell, being then aged seventeen years, arrived in New York and lived for three years with his aunt in that city and worked in a machine-shop in Hoboken.

Late in 1896. He shipped on a German vessel for about six months, leaving her at Baltimore and going to work in machine-shops in that city.

September, 1897. He shipped on the German vessel "Cassius," serving on her until October, 1898, when he was discharged from her in Hamburg, Germany, and while there, in Hamburg, Germany, obtained a Marine Engineer's certificate from the German authorities in October, 1898.

November, 1898. He joined the German S/S "St. George," at Hamburg, going on her to Vera Cruz, Mexico, and thence to Hamburg, thence to Boston, at which latter place he was discharged from the "St. George" in February, 1899.

Late in 1899. He joined the S/S "Staphan," also a German vessel, enlisting on her in New York, sail-

ing to the Chinese coast and remaining with her until March or April, 1900, when he [6] was paid off at Singapore. A few days later he joined the "Princess Irene," another German vessel, at Singapore, making a trip on her thence to Bremen, to New York and the Mediterranean and back to Hongkong, China, at which latter point he was discharged from the "Princess Irene," for the reason, he states, that this vessel was a German vessel subsidized by the German Government and he was disqualified from service, inasmuch as he had given New York as his place of residence upon enlisting, the date of his discharge being in December, 1900.

December, 1900. He joined the "Amigo," a Spanish vessel sailing to the Philippines, and stayed with her until he was discharged at Hongkong in September, 1901.

September, 1901. He then joined a Chinese vessel sailing between Manila and Cochin, China, staying with her until June, 1902, acting as second engineer.

June, 1902. He joined the "Elsa," another German vessel, at Hongkong, voyaging in her from China to New York, Boston and Baltimore as second engineer and remaining on her until November, 1903, when he was discharged from the "Elsa" in Boston.

November, 1903, or thereabout, he went to work in the machine-shops at Boston, working there until the summer of 1904, when he again joined a Cuban vessel, then worked ashore again in the same shop.

August, 1904. He joined the "Ernest Woerman," a German vessel, voyaging in her from New York to South America, then on the coast to Cuba and then to

Hamburg, Germany, which was the home port of that vessel, quitting her at Hamburg in March, 1905.

March, 1905. He went to Denmark and joined the "Brewster," a German vessel owned by Americans, serving on her as second engineer on the trip to Boston, and afterward becoming first engineer, running on her from Boston to Jamaica for the United Fruit Company for about ten months, being discharged at Baltimore on June 11, 1906. [7]

Two weeks later he was naturalized in Boston under sec. 2167, Revised Statutes, under whose provisions it was necessary for him to have resided continuously in the United States since at least April 21, 1894, and prior thereto.

Said Rockteschell did, as a matter of fact, reside in the United States prior to 1894 and resided here until 1897. As shown above he was not in the United States from November, 1898, to February, 1899. He states that the "Elsa" touched at Boston in November, 1903, and that he had last been in the United States prior to that date in the fall of 1900 when he was on the "Princess Irene"; that he was next back in the United States in May, 1903, next in November, 1903, working in Boston then until the summer of 1904; that the Cuban vessel which he was on until the fall of 1904 was sailing out of Boston, and again in March, 1905, and then at intervals up to the time of his naturalization.

Said Rockteschell had relatives in New York and Boston and has always been a single man.

He states that he thought he was entitled to naturalization, stating so in the following words:

"I thought so because I had made the United States my home since 1893. I am a single man. Never have been married, and while I was in China and the Philippines my home was aboard ship. I had no home nowhere else unless I regarded my relations in the United States as my home, and they lived at 6 Walnut Street, East Dearham, Mass., and on River Street, Hoboken, N. J. I visited them often while on furlough from ship, and when I worked on land in machine-shops I made my home in East Dearham with my aunt."

[Seal]

P. W. BLAZER.

Subscribed and sworn to before me this 25th day of May, 1909.

E. H. HEACOCK,

U. S. Commissioner for the Northern District of California, at San Francisco.

[Endorsed]: Filed May 26, 1909. Jas. P. Brown, Clerk. By Francis Krull, Deputy. [8]

*In the District Court of the United States in and for
the Northern District of California.*

14,024.

UNITED STATES OF AMERICA,

Petitioner,

vs.

RUDOLF HENRY ROCKTESCHELL,

Respondent.

Demurrer to Petition.

Now comes respondent herein and, demurring to

petition of petitioner on file herein, for cause of demurrer says:

I.

That said petition does not state facts sufficient to constitute a cause of action against said respondent.

II.

That said petition does not state facts sufficient to constitute cause for the institution of the proceeding promoted by said petition against said respondent.

Wherefore respondent prays for judgment that said petition be dismissed and for his costs herein.

Dated July 24, 1909.

W. F. SULLIVAN,
Attorney for Respondent.

Due service admitted.

Dated July 24th, 1909.

GEO. CLARK,
Asst. U. S. Attorney.

[Endorsed]: Filed Jul. 24, 1909. Jas. P. Brown,
Clerk. By M. Thomas Scott, Deputy Clerk. [9]

At a stated term of the District Court of the United States of America for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Saturday, the 3d day of February, in the year of our Lord one thousand nine hundred and twelve. Present: The Honorable R. S. BEAN, Judge.

No. 14,024.

UNITED STATES

vs.

ROCKSHELL.

Order Submitting Demurrer.

The demurrer to the complaint herein this day came on for hearing, and after hearing counsel for respective parties, by the Court ordered that said demurrer stand submitted to the Court for determination upon points to be filed. [10]

At a stated term of the District Court of the United States of America for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Thursday, the 8th day of February, in the year of our Lord one thousand nine hundred and twelve. Present: The Honorable R. S. BEAN, Judge.

No. 14,024.

UNITED STATES

vs.

RUDOLPH HENRY ROCKTESCHELL.

Order Sustaining Demurrer.

The demurrer to the petition herein for a cancellation of the certificate of naturalization issued to the defendant having been heretofore submitted to the Court for decision, now, after due consideration had thereon, by the Court ordered that said demurrer be, and the same is hereby sustained. [11]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 14,024.

UNITED STATES OF AMERICA,

Petitioner,

vs.

RUDOLF HENRY ROCKTESCHELL,

Respondent.

Petition for and Order Allowing Appeal.

To the Judges of the United States District Court in
and for the Northern District of California.

The United States of America, petitioner in the
above-entitled action, believing itself aggrieved by
the order of judgment made and entered herein on the
8th day of February, A. D. 1912, hereby appeals from
the said order of judgment sustaining the demurrer
of the respondent to the petition filed herein, to the
United States Circuit Court of Appeals for the Ninth
Circuit, and files herewith its assignment of errors
asserted and intended to be urged upon said appeal,
and prays that its appeal may be allowed.

Dated this 3d day of August, 1912.

J. L. McNAB,

United States Attorney in and for the Northern Dis-
trict of California.

The foregoing petition for appeal is hereby
allowed.

Dated this 3d day of August, 1912.

JOHN J. DE HAVEN,
United States District Judge.

[Endorsed]: Filed Aug. 3, 1912. Jas. P. Brown,
Clerk. By M. T. Scott, Deputy Clerk. [12]

*In the District Court of the United States, in and for
the Northern District of California, First Divi-
sion.*

No. 14,024.

UNITED STATES OF AMERICA,

Petitioner,

vs.

RUDOLF HENRY ROCKTESCHELL,

Respondent.

Assignment of Errors.

The United States of America herewith presents and files in connection with its petition for appeal herein its assignment of the errors upon which it will rely in the prosecution of its said appeal.

I.

The Court erred in adjudging, determining and deciding that the petition of the United States for the cancellation of the certificate of citizenship of the respondent did not and does not state facts sufficient to constitute a cause of action against said respondent.

II.

The Court erred in adjudging, determining and deciding that said petition did not and does not state facts sufficient to constitute cause for the institution of the proceeding promoted by said petition against said respondent.

III.

The Court erred in adjudging, determining and deciding that under the facts and circumstances set forth in said petition, the respondent was entitled to be and to become and to remain a citizen of the United States.

IV.

The Court erred in sustaining the demurrer of the respondent to said petition. [13]

V.

The Court erred in refusing to cancel the order and certificate of citizenship of the respondent upon the facts and circumstances set forth in said petition.

WHEREFORE, the said petitioner prays that the judgment and order of said Court sustaining respondent's demurrer to the petition of the said United States of America be reversed and that judgment be entered in favor of the United States in said cause.

J. L. McNAB,

United States Attorney for the Northern District of California.

[Endorsed]: Filed Aug. 3, 1912. Jas. P. Brown, Clerk. By M. T. Scott, Deputy Clerk. [14]

Citation (Original).

UNITED STATES OF AMERICA—ss.

The President of the United States to Rudolf Henry Rockteschell, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals

for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the clerk's office of the United States District Court, First Division, for the Northern District of California, wherein United States is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable JOHN J. DE HAVEN, United States District Judge for the Northern District of California, this 3d day of August, A. D. 1912.

JOHN J. DE HAVEN,
United States District Judge.

[Endorsed]: No. 14,024. U. S. Circuit Court of Appeals for the Ninth Circuit. United States, Appellant, vs. Rudolph H. Rockteschell. Citation on Appeal. Filed Aug. 3, 1912. Jas. P. Brown, Clerk. By M. T. Scott, Deputy Clerk. [15]

Citation (Copy).

UNITED STATES OF AMERICA—ss.

The President of the United States to Rudolf Henry Rockteschell, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty

days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court, First Division, for the Northern District of California, wherein United States is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable JOHN J. DE HAVEN, United States District Judge for the Northern District of California, this 3d day of August, A. D. 1912.

JOHN J. DE HAVEN,
United States District Judge.

[Endorsed]: Filed Aug. 3, 1912. Jas. P. Brown, Clerk. By M. T. Scott, Deputy Clerk. [16]

Certificate of Clerk, U. S. District Court to Transcript of Record.

I, Jas. P. Brown, Clerk of the District Court of the United States of America for the Northern District of California, hereby certify the foregoing and hereto attached 16 pages, numbered from 1 to 16, constitute a full, true and correct transcript of the proceedings, as the same now appear on file and of record in this office in the case of The United States of America vs. Rudolf Henry Rockteschell, numbered 14,024, made up pursuant to Praeceptum for record embodied herein.

I further certify that the costs of preparing and certifying the foregoing Transcript of Appeal is the sum of Six (6) Dollars and Seventy (70) cents, and that the same has been charged against the said United States of America in the above-entitled matter.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court, this 14th day of October, A. D. 1912.

[Seal]

JAS. P. BROWN,
Clerk.

By C. W. Calbreath,
Deputy Clerk. [17]

[Endorsed]: No. 2191. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, Appellant, vs. Rudolf Henry Rockteschell, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, First Division.

Filed October 14, 1912.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.